STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXX
Petitioner **File No. 87071-001**

v

Blue Cross and Blue Shield of Michigan
Respondent
_____/

Issued and entered
This 26th day of February 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On January 7, 2008 XXXX, on behalf of his minor daughter XXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq*. The Commissioner reviewed the material submitted and accepted the request on January 18, 2008.

Because the appeal involved medical issues, the Commissioner assigned the case to an independent review organization (IRO) which provided its recommendations to the Commissioner on January 25, 2008.

II
FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross and Blue Shield of Michigan (BCBSM) under its Community Blue Group Benefits Certificate (the certificate). The Petitioner was born [in] 2000 and was diagnosed with cerebral palsy. In September 2006, she underwent surgery to correct a left hip subluxation. She received physical therapy and speech therapy from January 2

through July 16, 2007. BCBSM denied coverage for the speech and physical therapy. The amount charged for the speech therapy was $1,040.00, the amount charged for physical therapy was $9,300.00, for a total of $10,340.00.

The Petitioner appealed BCBSM's denial of coverage. After a managerial-level conference on October 18, 2007, BCBSM did not change its decision and issued a final adverse determination dated November 8, 2007.

III
ISSUE

Did BCBSM properly deny coverage for the Petitioner's speech and physical therapy provided from January 2 through July 16, 2007?

IV
ANALYSIS

BCBSM's Argument

It is BCBSM's position that, under its certificate of coverage, it pays for physical therapy and speech therapy when the therapy is provided for rehabilitation. Physical therapy must be given for a neuromuscular condition that can be significantly improved in a reasonable and generally predictable period of time. No coverage is provided for therapy to treat long-standing, chronic conditions. BCBSM says it submitted the Petitioner's medical records to its medical consultant for review. The consultant concluded that the physical therapy was maintenance level and not supported by the physician orders or summaries of progress.

Regarding the speech therapy, BCBSM says the provider's professional status was found to be that of an occupational therapist rendering speech therapy. The specialty code used by the provider is "67" which is for occupational therapist. BCBSM says it cannot approve the Petitioner's speech therapy since her certificate does not include benefits for speech therapy when rendered by a provider of an occupational specialty.

Petitioner's Argument

Regarding the physical therapy, the Petitioner had just gone through hip surgery and was in a full body cast for eight weeks. The physical therapy was medically necessary following her surgery and lengthy period of immobility. It cannot be classified as maintenance care. The speech therapy was provided through XXXX and was performed by a properly licensed speech pathologist, XXXX, MA, CCC-SLP. All therapy was prescribed by a physician.

The Petitioner's father argues that his daughter's speech and physical therapy met all the requirements set forth in the BCBSM certificate and should be covered by BCBSM.

Commissioner's Review

The Commissioner reviewed the certificate, the arguments and documents presented by the parties, and the report of the IRO. The medical issues in this case were presented to an IRO for analysis as required by Section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer in this matter is certified by the American Board of Physical Medicine and Rehabilitation, is the medical director of the department of physical rehabilitation at an east coast hospital, is a member of the American Academy of Physical Medicine and Rehabilitation and the American Association of Neuromuscular and Electrodiagnostic Medicine, and is in active clinical practice.

BCBSM argued that the Petitioner's physical therapy was not covered since it was provided for maintenance and the speech therapy was not covered since it was not provided by a speech therapist. Each form of therapy is addressed separately below.

Physical Therapy

BCBSM considered the Petitioner's physical and speech therapy not medically necessary because they were used to treat a longstanding, chronic condition. While it is true that cerebral palsy is a longstanding condition, the Petitioner had recently undergone major surgery and had been

in a full body cast for almost two months. The surgery and casting resulted in a significant change in her normal functional status. Thus, the therapy was being used to treat a new, acute problem.

The IRO reviewer found that the Petitioner's physical therapy was prescribed by her medical doctor for a neuromuscular condition that could be significantly improved in a reasonable or generally predictable amount of time as BCBSM's certificate of coverage requires. The Petitioner did improve significantly within six months. The therapy was for a limited time period and was intended to restore her normal functional level.

Speech Therapy

The Petitioner's speech therapy was prescribed by her doctor and was necessitated by the change is her speech status resulting from decreased head and trunk control caused by the prolonged immobility. (IRO report, page 3.)

Petitioner's speech therapy was performed by XXXX, a certified speech language pathologist. The therapist's professional designation is "CCC-SLP" which stands for "Certificate of Clinical Competency-Speech-Language Pathology". This is a professional certification of the American Speech-Language-Hearing Association. Although XXXX may have been "coded" in BCBSM's system, the fact remains that she is certified in speech-language pathology. The certificate of coverage requires that speech therapy be performed "by a speech-language pathologist certified by the American Speech-Language-Hearing Association." This is XXXX's precise professional qualification, a fact which the Petitioner's parents repeatedly pointed out to BCBSM. It is difficult to ascertain how BCBSM overlooked this salient fact through its internal appeal process and in presenting its position to the Commissioner during this external review.

The IRO reviewer concluded that the Petitioner's physical and speech therapy were medically necessary for the purpose of rehabilitation and met the criteria of BCBSM, the peer reviewed medical literature, and current standard of care in the medical community. The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the

Commissioner finds no reason to reject it. Therefore, the Commissioner accepts the IRO reviewer's conclusion that the Petitioner's physical and speech therapy provided from January 2, 2007 until July 16, 2007, were medically necessary and met BCBSM criteria for these types of care. Based on that conclusion, the Commissioner finds that the Petitioner's physical and speech therapy are a covered benefit under her certificate.

V
ORDER

Respondent BCBSM's November 8, 2007, final adverse determination is reversed. BCBSM is required to provide coverage for the Petitioner's physical and speech therapy provided from January 2, 2007, through July 16, 2007, within 60 days and shall provide the Commissioner with proof of payment no later than seven days after payment is made.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.